

Budget Brief – Post Conviction Indigent Defense Fund

NUMBER CFGO-08-11

SUMMARY

UCA 78-35a-202 allows persons convicted of a capital crime and sentenced to death to challenge the conviction and have counsel appointed. If a defendant requests counsel and is determined by the court to be indigent, costs of counsel and other reasonable litigation expenses incurred in providing the representation must be paid from state funds by the Division of Finance.

The program was managed by the Attorney General's (AG) office for a period of time but was moved into a separate line item to avoid the appearance of a conflict resulting from the AG prosecuting individuals while directly funding their defense. Funds are housed in the Division of Finance for administrative purposes only, though the division does have administrative rule authority to set reimbursement rates.

The Division of Finance also manages two accounts that are similar to the Post Conviction Fund. These accounts are funded by participating counties with statutory language for legislative consideration of any shortfall:

- The *Indigent Inmate Defense Fund* is for inmates convicted of crimes while in prison. Sanpete County uses the program for inmates accused of crimes committed at the state prison in Gunnison. No other counties participate at this time.
- The *Indigent Capital Defense Fund* provides money to defend indigents charged with capital crimes in participating counties. The Division of Finance assesses the twenty-four participating counties annually and should be able to manage the fund in FY 2009 without state assistance.

Figure 1: Administrative Services - Post Conviction Indigent Defense - Budget History

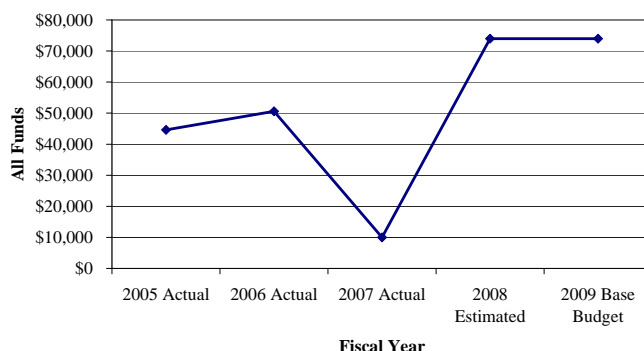
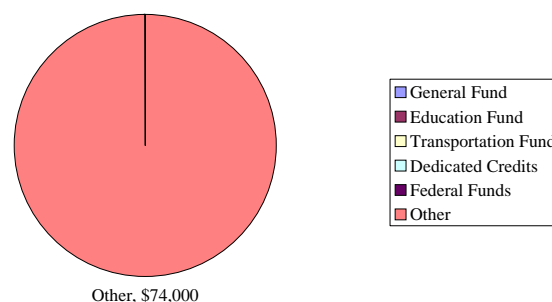


Figure 3: Administrative Services - Post Conviction Indigent Defense - FY 2009 Funding Mix



ISSUES AND RECOMMENDATIONS

Recent Developments

In the last few months the association of criminal defense lawyers has approached the Courts with a request for a higher rate from the Division of Finance, which has rulemaking authority to change reimbursement rates. The current rates have not changed for several years. The attorneys ordered by the Court to represent the convicts say that the legal costs necessary to provide a defense exceed the reimbursement by the state. Part of the problem may be a lack of communication from the Courts when an attorney is assigned the case on what the reimbursement will be from the state. Attorneys often learn of the amount only after they have provided some services for the defense. Changing the current rate would simply require an administrative rule change, however, the broader policy implications (including future funding needs) are referred to the Legislature for their review. The Division is receiving pressure to change these rates

Use Carry-Forward Balances

The program should be able to continue with carry-forward balances in FY 2009. After expending \$10,000 and lapsing \$9,400 to the General Fund in FY 2007, the fund had \$250,000 remaining in nonlapsing balances.

Expenditures in the last four years have not risen above \$51,000. However, if the Division of Finance were to increase its reimbursement rates to defense attorneys, expenditures may increase significantly. At some point in the future the program's nonlapsing balance will run out, requiring additional state funding for the program. Whether that will be sooner or later will depend on the attorney reimbursement rate and the number of cases that are appealed. As the Analyst has recommended a reduction in the Division of Finance's non-lapsing balance, the Division has requested that a portion of that reduction be reallocated to this line item.

BUDGET DETAIL

A General Fund appropriation was last made in FY 2002. Since then, this program has expended nonlapsing carry-forward balances only.

Intent Language

The Analyst recommends the Legislature adopt the following supplemental intent language for Fiscal Year 2008:

Under terms of UCA 63-38-8.1(3), the Legislature intends not to lapse Item 41, Chapter 1, Laws of Utah 2007. Expenditure of these funds is limited to: Current Expenses - \$250,000

LEGISLATIVE ACTION

The Analyst recommends the Legislature consider adopting:

1. A total FY 2009 appropriation of \$74,000 for the Post Conviction Indigent Defense Fund.
2. Intent language making the FY 2008 appropriation nonlapsing but limited to uses specified in the language.

BUDGET DETAIL TABLE

Administrative Services - Post Conviction Indigent Defense						
Sources of Finance	FY 2007 Actual	FY 2008 Appropriated	Changes	FY 2008 Revised	Changes	FY 2009* Base Budget
Beginning Nonlapsing	269,400	195,400	54,600	250,000	(74,000)	176,000
Closing Nonlapsing	(250,000)	(121,400)	(54,600)	(176,000)	74,000	(102,000)
Lapsing Balance	(9,400)	0	0	0	0	0
Total	\$10,000	\$74,000	\$0	\$74,000	\$0	\$74,000
Programs						
Post Conviction Indigent Def Fund	10,000	74,000	0	74,000	0	74,000
Total	\$10,000	\$74,000	\$0	\$74,000	\$0	\$74,000
Categories of Expenditure						
Current Expense	10,000	74,000	0	74,000	0	74,000
Total	\$10,000	\$74,000	\$0	\$74,000	\$0	\$74,000

*Does not include amounts in excess of subcommittee's state fund allocation that may be recommended by the Fiscal Analyst.